



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. E. Y. Cunningham  
County Auditor,  
Maverick County  
Graham, Texas

Dear Sir:

Opinion No. O-1429

Re: Must the county tax assessor-collector file a delinquent tax record with the county clerk? Is the county clerk entitled to a fee of \$1.00 for this service?

We are in receipt of your letter of September 9, 1939, in which you request an opinion of this department as to whether or not it is necessary for the county tax assessor-collector to file a delinquent tax record with the county clerk.

Article 7321, Revised Civil Statutes of Texas, provides in part as follows:

"This delinquent tax record for each county shall be delivered to and preserved by the county clerk in his office; . . ."

Article 7322, Revised Civil Statutes, reads as follows:

"On receipt of such delinquent tax record the county clerk of each of the counties of this State, respectively, shall certify the same to the commissioners court for examination and correction, and he shall thereafter cause the same to be recorded in a book labeled the 'Delinquent Tax Record of . . . County.' The delinquent tax record shall be arranged numerically as to abstract numbers, and shall be accompanied by an index showing

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the names of delinquents in alphabetical order."

These statutes direct the county tax assessor-collector to turn over the delinquent tax record to the county clerk, who shall certify the same to the commissioners' court, and shall then cause the same to be recorded in a book labeled "Delinquent Tax Record of .....County". The delinquent tax records shall be arranged as set out in Article 7332, supra. Your first question must therefore be answered in the affirmative.

In your letter you also ask whether or not the county clerk is entitled to a fee of One Dollar (\$1.00) when the delinquent tax is paid in consideration for his service.

Prior to 1931, Article 7332, Revised Civil Statutes, read in part as follows:

"The county clerk, for making out and recording the data of each delinquent assessment and for certifying same in the minutes of the Commissioners' Court and for all other services rendered in such suits shall receive the sum of One Dollar (\$1.00)."

On the basis of that statute this department on several occasions ruled that the county clerk was entitled to a One Dollar (\$1.00) fee for all of his services, and he was to receive that One Dollar (\$1.00) fee whether a suit for the collection of delinquent tax was filed or not.

In 1931, Article 7332 was amended to read in part as follows:

"The county clerk shall receive One Dollar (\$1.00) in full for his services in each case."

"In case the delinquent taxpayer shall pay to the collector the amount of delinquent taxes for which he is liable, together with accrued interest after the filing of suit before judgment is taken against him in the case, then only one-half of the fees taxable in such a case, as provided for herein, shall be charged against him."

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The effect of this amendment on the fee collectable by the county clerk was construed in a conference opinion written by Assistant Attorney General Homer C. DeWolfe, dated August 18, 1933. Mr. DeWolfe summarized all of the statutes prior to the amendment in 1931, and then considered this amendment and concluded as follows:

"From August 23, 1933, to the present time, the county clerk has been allowed a fee of one (\$1.00) dollar in full for his services in each case where suit has been filed for the collection of the taxes and has been prosecuted to final judgment, if, however, after suit has been filed, the delinquent taxpayer pays the delinquent taxes, penalties, and interest the county clerk is entitled to but fifty cents in full for his services. Since August 22, 1931, the county clerk has not been entitled to a fee in connection with the collection of delinquent taxes unless suit has been filed for the collection thereof."

The same conclusion which Mr. DeWolfe reached in his opinion had been previously announced by Assistant Attorney General Scott Gaines in an opinion dated December 17, 1931. Both of these opinions hold that the county clerk is not entitled to any fee unless suit is actually filed for the collection of the delinquent tax. If suit is filed and reduced to judgment the county clerk is entitled to receive one dollar (\$1.00) as his fee. If, however, after suit is filed the delinquent taxpayer pays the taxes and interest and penalty, then the county clerk would be entitled to only fifty cents (\$0.50).

It is the opinion of this department that these two opinions discussed have correctly determined the fee which the county clerk may collect for his service in receiving and recording the delinquent tax roll.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Billy Goldberg*  
Billy Goldberg  
Assistant

APPROVED OCT 4, 1939

BG:RS

*H. F. Moore*  
FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED  
OPINION  
COMMITTEE  
BY *Blum*  
CHAIRMAN